

ORIGINAL *dhc*

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN D. PERKEY and THERESA M.
PERKEY, : CIVIL ACTION NO. 1:CV-00-1639

Plaintiffs : JURY TRIAL DEMANDED

vs.

RELIABLE CARRIERS, INC.,
DANIEL JOSEPH BEMBEN and KENT,
Defendants :

FILED
HARRISBURG, PA

Magistrate Judge Smyser

MAY 19 2003

MARY E. D'ANDREA, CLERK
Per *CD*
Deputy Clerk

DEFENDANT RELIABLE CARRIERS, INC. AND DANIEL JOSEPH BEMBEN'S
MOTION IN LIMINE FOR A SETOFF AGAINST ANY VERDICT IN THE AMOUNT
OF FIRST PARTY BENEFITS PAID BY PRUDENTIAL INSURANCE COMPANY

AND NOW come Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben, by and through their attorneys, Godfrey & Courtney, P.C., and state the following:

1. Reliance Insurance Company ("Reliance") insured Reliable and Bemben at the time of the accident.
2. While Plaintiffs' suit against Reliable and Bemben was pending, Reliance became insolvent.
3. The Michigan Property and Casualty Guaranty Association ("MPCGA"), the sister association to the Pennsylvania Property and Casualty Guaranty Association ("PIGA"), assumed responsibility.
4. Following the accident, Plaintiffs received a wage loss payment in the amount of \$5,000.00 and \$5,000.00 as settlement of their uninsured motorist claim from Prudential Insurance Company.
5. Section 991.1817, Non-duplication of recovery, of the Pennsylvania Statute states in subsection (a) the following:

Any person having a claim under an insurance policy shall be required to exhaust first his right under such policy. For purposes of this section, a claim under an insurance policy shall include a claim under any kind of insurance, whether it is a first-party or third-party claim, and shall include, without limitation, accident and health insurance, worker's compensation, Blue Cross and Blue Shield and all other coverages except for policies of an insolvent insurer. **Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under other insurance.**

40 P.S. Sec. 991.1817(a).

Section 500.7931(3) of the Michigan Complied Laws Annotated states the following:

If damages or benefits are recoverable by a claimant or insured under an insurance policy other than a policy of the insolvent insurer, or from a motor vehicle accident claims fund, or a similar fund, the damages or benefits recoverable shall be a credit against a covered claim payable under this chapter . . . An insurer or a fund may not maintain an action against an insured of the insolvent insurer to recover an amount which constitutes a credit against a covered claim under this section.

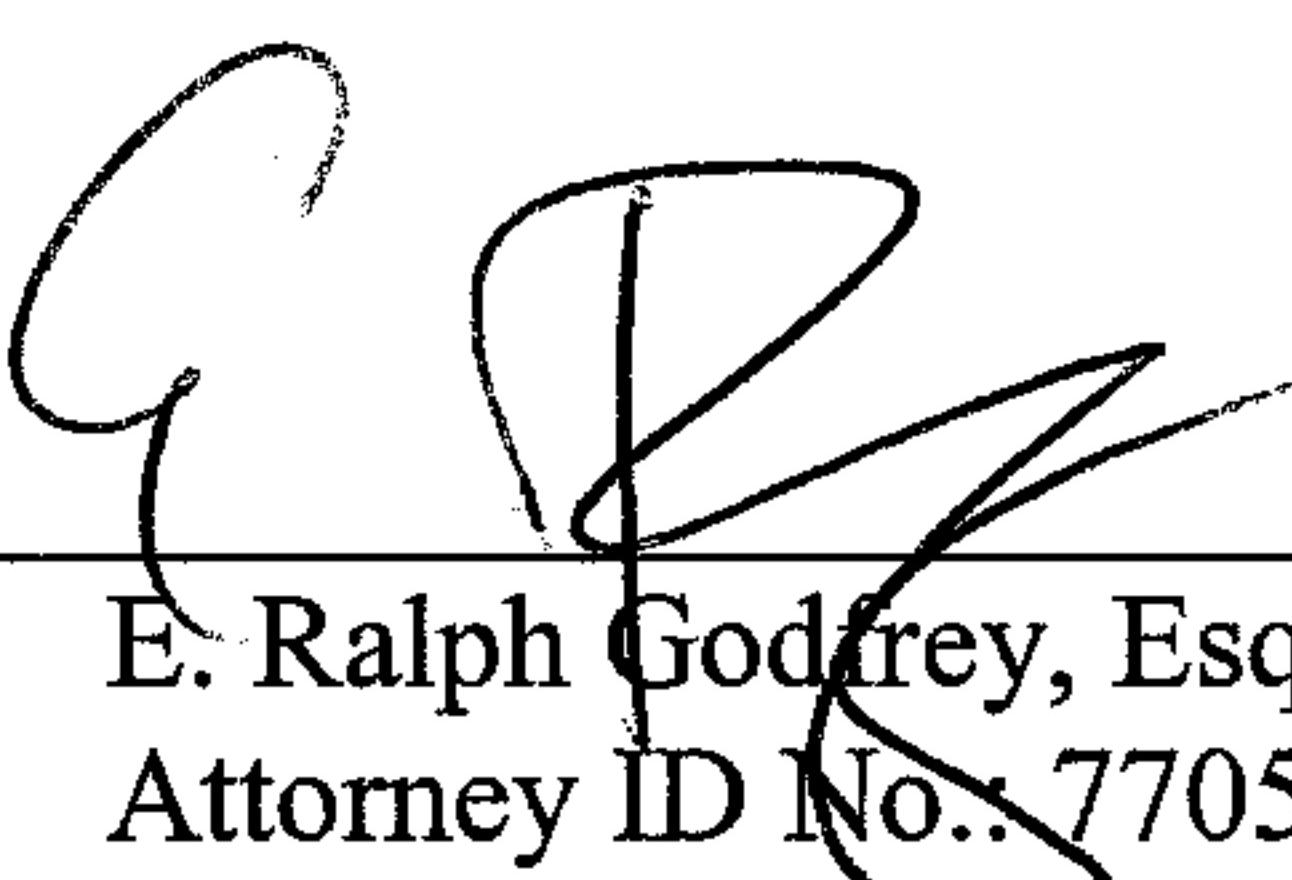
M.C.L.A. 500.7931.

6. Pursuant to both the Pennsylvania and Michigan Acts, the Defendants are entitled to a \$10,000.00 dollar setoff or credit against any verdict because of the payments made by Prudential Insurance Company.

WHEREFORE, for all of the foregoing reasons, Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben, respectfully request that this Honorable Court issue an order entitling Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben to a setoff and/or credit in the amount of \$10,000.00 against any verdict.

Respectfully submitted,

GODFREY & COURTNEY, P.C.

By: 

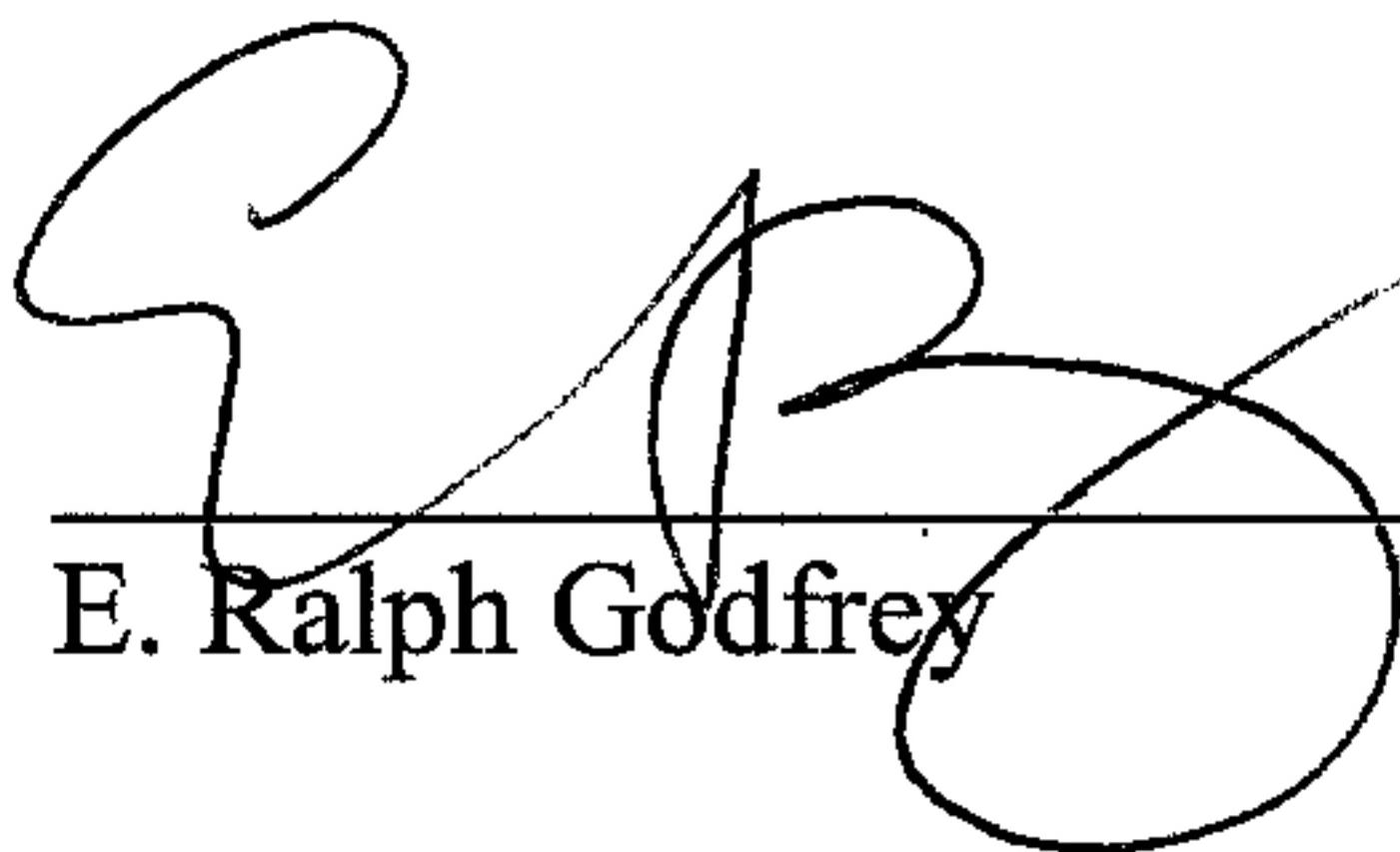
E. Ralph Godfrey, Esquire
Attorney ID No.: 77052
2215 Forest Hills Drive, Suite 36
P.O. Box 6280
Harrisburg, PA 17112
(717) 540-3900

Date: May 19, 2003

CERTIFICATE OF SERVICE

AND NOW, this 19 day of May, 2003, I, E. Ralph Godfrey, Esquire, of Godfrey & Courtney, P.C., attorneys for Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben, hereby certify that I served the foregoing Motion in Limine this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

Marcus McKnight, Esquire
Mark D. Schwartz, Esquire
Irwin, McKnight & Hughes
60 West Pomfret Street
Carlisle, PA 17013



E. Ralph Godfrey